

## **STOP ORDERS**

**5511**

(No. 6 January 1999)

Stop orders are authorized under PRC Sections 4602.5 and 4602.6. The stop order administratively suspends timber operations temporarily while judicial remedies are pursued under the injunctive process. The stop order is used only on timber operations where reasonable cause exists to believe that violations or threatened violations will result in imminent and substantial harm to soil, water, timber resources, or fish and wildlife.

The use of the stop order must be limited in scope only to those specific actions that are the actual cause of the damage or threatened damage. An example would be the issuance of an order to stop the placement of large amounts of soil into Class I water during tractor yarding. The felling operations may continue where there is no damage or threat of damage from such operations.

A forest officer [PRC Section 4602.5(f)] may issue the stop order for the day of issuance and the following day only, but may be extended for up to five additional days by a supervising forest officer. During this extended time period, the department may replace the stop order by entering into a written agreement with the responsible parties, if a cash deposit or performance bond made payable to the department secures it.

Failure of the timber operator or any employee thereof to comply with a validly issued stop order is a misdemeanor under the authority of PRC Sections 4601 and 4602.5(g). The timber operator is the only person who may be charged with a misdemeanor for failure to comply with the stop order, even though an employee may be the person who failed to comply.

The timber operator may file a claim with the Board of Control if he/she believes the stop order was not issued for reasonable cause. If the operator is successful in this claim, an award of \$100 to \$1,000 per day may be made for each day the stop order was in effect.

## **STOP ORDER PROCEDURE**

**5511.1**

(No. 6 January 1999)

A forest practice inspector who, during an inspection, discovers violations that have resulted or may result in substantial environmental damage will consider all available enforcement actions. A stop order will be used only when other actions are not or would not be effective in preventing imminent and substantial environmental damage. The following guidelines will be used to determine "imminent" and "substantial" damage.

- "Imminent" - Resource damage or threatened damage will be considered imminent if it is already occurring or if it will occur within seven calendar days of the date of discovery.
- "Substantial" - Environmental damage will be considered substantial only if the following criteria are met:
  1. The violation is severe enough so that it may be only partially correctable.
  2. The resource damage is sufficient to support seeking a temporary restraining order during the effective period of the stop order.
  3. Evidence is present to support a claim of reduction in the quality of soil, water, timber resources, or fish and wildlife habitat.

When it has been determined that there is reasonable cause to believe danger is imminent, damage is likely to be substantial, and no other effective preventive action exists, a stop order may be issued by a peace officer who is a Forester II or higher grade RPF. "Reasonable cause" is defined as such evidence as would lead a reasonable and prudent person, trained in the field of forestry and possessed of all pertinent facts, to conclude that there is a little doubt that imminent danger to the environment exists.

Before issuance of a stop order, the forest officer will always consider informally requesting that the operator cease the offending action and make necessary corrections in a timely manner. If such a request is not effective, then the stop order should be issued.

The stop order will be patterned after the [Timber Operations Stop Order](#), and will contain the following:

- THP number.
- Approximate legal location of the violation(s).
- The specific act or omission that constitutes the violation(s) or threatened violation(s).
- The specific action(s) that must be stopped.
- The name and address of record of the responsible timber operator.
- A list of corrective actions that will reduce the impact of the violation(s).
- The effective period of the initial or extended stop order.
- The name and title of the issuing forest practice officer.

To effect service of the stop order, it will be delivered to the person in charge of the timber operation at the time the inspecting forest practice officer is on the THP area. If no one is present on the operation at the time the stop order is prepared, it will be posted conspicuously on the yarder or log loading equipment at the currently active landing. After the stop order is posted, a copy will be delivered to the responsible timber operator in person, or to the operator's address of record before commencement of the next working day. The timber operator's address of record is the one provided on the current timber operator's license application. All personnel will keep accurate notes and records of the stop-order issuance. Personal service of the stop orders is always preferable.

Immediately following issuance of a stop order, the forest practice officer will relay the information to his/her headquarters and inform a supervising forest officer of the sequence of events. A supervising forest officer, as defined in PRC Section 4602.5(f), is a forest officer who may supervise, oversee, or review the work of the forest officer issuing the stop order. The Director's forest practice staff will be notified of the occurrences as soon as possible. This will be followed immediately by a copy of the stop order and a letter documenting the sequence of events. A supervising RPF and the forest practice officer will conduct a joint inspection of the area the next calendar day.

If the inspection reveals that reasonable cause did not exist for issuance of a stop order, the facts and circumstances will be documented and a copy forwarded immediately to the Director's office. Any request by the timber operator to file a claim with the Board of Control will be handled in accordance with Board of Control rules and regulations (CCR, Title 2).

When reasonable cause does exist, the supervising RPF may make one of the following determinations after the field inspection:

- Reasonable cause exists for the initial stop order, but the timber operator disagrees with the finding. Any request by the timber operator to file a claim with the Board of Control will be handled in the manner described above.
- The stop order was properly issued, but the timber operator has completed acceptable corrective work for the violations. At this point, timber operations may continue, but the forest practice officer should consider initiating other enforcement actions, such as misdemeanor action.
- An extension of the original stop order is warranted. This will be discussed with the Director's forest practice staff before it is actually issued. The stop order extension will be prepared in the same format as described in the [Timber Operations Stop Order](#). The maximum extension period for a stop order is five days, excluding Saturday and Sunday. Upon determination that an extension is warranted, serious consideration should be given to proceeding with injunctive action. The injunctive action procedures outlined in [Sections 5506](#) through [5506.1](#) of this handbook will be used.

- The timber operator is willing to enter into a written agreement for corrective work on existing violations and continuance of timber operations in compliance with the Forest Practice Act and Rules. Depending upon the operator's attitude, it may or may not be desirable to issue a formal extension of the original stop order for up to five days or until the agreement can be completed.

## **STOP ORDER AGREEMENT**

**5511.2**

(No. 6 January 1999)

PRC Section 4602.5(d) allows the department to enter into a written agreement with the responsible parties permitting continuance of timber operations if in compliance with the Forest Practice Act and Rules. The section allows the department to require a reasonable cash deposit or performance bond to ensure compliance with the agreement.

The agreement will follow the pattern in the [Agreement in Lieu of Stop Order](#), and will be issued on the timber operation after conferences with the region and the Director's forest practice staff. A copy of the executed agreement will be forwarded immediately to the Director's staff.

There is no specified effective period for the agreement, but it should normally be limited to 30 days. If injunctive action is pursued, the agreement may be superseded by an agreement entered into under the authority of PRC Section 4605. The cash deposit or performance bond must be submitted to the responsible department forester before the timber operations may continue. The Director's forest practice staff will be contacted for instructions on the processing and retention of these deposits or bonds. When the conditions of the agreement have been completed satisfactorily, a letter stating that the bond may be released will be sent to the bonding agent and a copy forwarded to the Director's staff.

Should the terms of the agreement be violated, the Director's staff will be contacted immediately, through channels, for assistance. The corrective actions needed for compliance with the agreement will be defined, and the responsible parties notified of these requirements. If the work is not immediately completed, the department will arrange for accomplishment of the corrective work. Before commencement of the work, the bonding agent will be notified of the department's intention to place a demand against the bond. When violations of the agreement are discovered, department foresters should consider pursuing other potential enforcement actions simultaneously with the corrective work.

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